ARIZONA REAL ESTATE EXCHANGE, INC.

IBLA 86-202 Decided September 18, 1986

Appeal from a decision of the Bureau of Land Management Area Manager, Phoenix Resources Area, Arizona, rejecting color-of-title application. A-21192.

Affirmed.

1. Color or Claim of Title: Adverse Possession--Color or Claim of Title: Applications

Good faith and peaceful adverse possession for more than 20 years pursuant to a claim of title is required to establish a class 1 color-of-title claim under 43 U.S.C. § 1068 (1982). There can be no peaceful, adverse possession where applicant's chain of title commences at a time when the land was withdrawn and such a claim is properly rejected.

APPEARANCES: Dan Bartos, for appellant; Fritz L. Goreham, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Arizona Real Estate Exchange, Inc., appeals the November 27, 1985, decision of the Area Manager, Phoenix Resource Area, Bureau of Land Management (BLM), rejecting its color-of-title application A-21192. The application was filed on behalf of appellant by Dan Bartos (Bartos) 1/ on August 12, 1985, claiming the E 1/2 NE 1/4 sec. 10, and the W 1/2 NW 1/4 sec. 11, T. 1 N., R. 8 E., Gila and Salt River Meridian, containing 160 acres, under the Color of Title Act, 43 U.S.C. § 1068 (1982). BLM rejected appellant's application because it failed to meet the requirements of the Act.

1/ The BLM Land Report in the case file for appellant's color-of-title application states in part that a check with the Arizona Corporation Commission revealed the corporation was established August 24, 1971, and was presently in "good standing" with the Commission. The file does not disclose Bartos' relationship with the corporate appellant. Jenny Alban signed the application as secretary-treasurer of appellant.

The record discloses the lands embraced in appellant's color-of-title application were included in a reclamation withdrawal pursuant to section 3 of the Act of June 17, 1902, 32 Stat. 388, effected by the Secretary's Order of August 21, 1909, for the Salt River Project. These lands were subsequently opened to mining location, entry, and patent by Departmental Order of September 16, 1939, pursuant to 43 U.S.C. § 154 (1982). They have not been opened to settlement under the public land laws. See United States v. Syndbad, 42 IBLA 313, 323 (1979). Further, the master title plat discloses that title to the SE 1/4 NE 1/4 of sec. 10 included in appellant's claim was conveyed to the State pursuant to a lieu selection.

The BLM realty specialist who prepared the color-of-title Land Report dated November 25, 1985, approved by the Area Manager on November 27, 1985, represented in her report that she spent several hours with Bartos discussing the history of his claim and made copies of "some of the many papers [he] had with him." Following is her summary of the information provided by Bartos during his visit and on his color-of-title application:

> 1. Mr. Bartos asserted, during the conversation and on the application, that he and his partners entered the land in 1932 and have been there continuously since that time. Entryman listed in Item 11 b. of the color-of-title application are: Jacob Alexander, A. Syndbad and ARREX, Inc., by Bartos. This appears to be a listing of Mr. Bartos' partners.
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> 2. He believed the lands were opened to "entry" in 1939 by a secretarial order, which gave them the right to do so. To support his position, Mr. Bartos produced a copy of a portion of the Secretarial Order of September 16, 1939, titled, "Order Opening Lands to Mining Location, Entry and Patent." In the first paragraph, the order states that, subject to valid existing rights, the subject lands were opened to location, entry and patent under the general mining laws, subject to special stipulations to protect the land for uses for which a Bureau of Reclamation withdrawal for the Salt River Project was made in 1909.
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> 3. Mr. Bartos stated repeatedly that they do not base the color-of-title application on mining claims, that mining claims on the property had been rejected by the government earlier, and that their entry should never have been treated or considered as mining. Copies of the decisions and appeals concerning the mining claims are included in the file. They include a copy of a judgment dated March 11, 1982, allowing Andy Syndbad and Associates 30 days to remove themselves and their property.
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> 4. Mr. Bartos asserted, both during the discussion and on the application form, that they are entitled to the land in accordance with "the Congressional Act of Land Entry, 1932 USCA 43-161."

This reference pertains to the Homestead Entry Act. He stated no homestead application had been filed, that it was not needed, and that they had entered the land, which they had a right to do because it was opened to entry in 1939. BLM records do not record that any kind of application has been filed for acquiring the subject land. The lands have not been open for settlement under the public land laws since the withdrawal of 1909.

5. The land has not been cultivated, according to their application and Mr. Bartos' statements. He stated the land was desert and no one would try to cultivate it. Mr. Bartos stated during the conversation that the $18,500 improvements, shown in Item 8 c. of the form as added since entry was made, are mobile home type vehicles with structures added thereto. The structures appear to be located in sec. 10: SE 1/4 NE 1/4 NE 1/4 NE 1/4.

6. Mr. Bartos insisted several times, and entered the statement on the application, that they should be issued an "entry patent" the same as was done for Charles Weekes for land in sec. 11 of T. 1 N., R. 8 E. When told the patent was for a private exchange action, Mr. Bartos countered that it was a patent for entry on the land, just as he and his partners had done. I was allowed to make copy of the patent, No. 1139014, of which Mr. Bartos had a copy in his possession. The patent conveys T. 1 N., R. 8 E., sec. 11: E 1/2 NW 1/4, W 1/2 NE 1/4 to Charles F. Weekes and Violet Weekes, in exchange for certain other lands situated in the State of Arizona. In searching BLM records it was found that the "certain other land" received by the federal government [sic] are T. 1 N., R. 8 E., sec. 25: SW 1/4. All of this section 25 was patented to a Joseph P. Miller on May 12, 1933, pursuant to the Homestead Act of May 26, 1862, and the acts supplemental thereto.

7. Mr. Bartos stated there were no conveyances affecting title to the land which should be entered on Form 2540-2 because they had been there continuously since 1932. However, among Mr. Bartos' papers, which I was allowed to copy, was a copy of a warranty deed, dated 12-26-1984, showing conveyance of Ruth 1-8 Mining Claims, located on approximately the subject lands, from Andy Syndbad to Arizona Real Estate Exchangers, Inc. These are the mining claims which were declared null and void on August 28, 1967 (AR-034833), decision appealed, and decision affirmed August 29, 1979. [2/]

2/ The Board affirmed the decision of Administrative Law Judge Rampton, issued after a hearing, declaring the Ruth Nos. 1 through 8 lode mining claims void. United States v. Syndbad, supra, aff'd, United States v. Syndbad, Civ. No. 82-5324 (9th Cir. 1983). The map of these claims indicated they embraced the land described in appellant's claim, as well as part

> U.S. District Court Judgment CIV-80-2-3-PHX-CLH, dated March 11, 1982, followed and required Andy Syndbad, his successors and assigns, and all persons acting in concert with them to vacate and remove all personal property and improvements from the subject lands within 30 days of the date of the judgment.
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> This district court judgment was appealed to the U.S. Court of Appeals for the Ninth Circuit, Case No. 82-5324, with the district court judgment affirmed January 13, 1983. Copies of these documents, beginning with the decision affirmed August 29, 1979, are included in the subject color-of-title application case file. There is no indication that the lands were vacated or the property removed, nor that any action was taken to remove the occupants or property.

BLM's decision dated November 27, 1985, rejected appellant's color-of-title application for failure to submit "any documents purporting to convey title to the land, * * * tax receipts or other evidence that the land has been held in good faith and in peaceful, adverse possession." The BLM decision was based in part on the fact the lands had been withdrawn since 1909 as part of a reclamation withdrawal for the Salt River project, having been subsequently opened only to permit location under the general mining laws. The decision also found the patent to an adjoining tract of land in sec. 11 issued pursuant to an exchange application under section 8 of the Taylor Grazing Act, as amended, 3/ to be irrelevant to appellant's color-of-title claim. Moreover, BLM, based upon the recommendation contained in the Land Report, concluded that "there is no legal basis for continued occupancy of the subject lands."

The statement of reasons for appeal filed by Bartos on appellant's behalf, entitled "Methodical Epitome," is so nebulous as to be virtually incomprehensible. Appellant's central argument appears to rest upon his having held the subject land in peaceful adverse possession for more than 20 years, as required by 43 U.S.C. § 1068 (1982). Appellant's brief sets forth this argument in the following fashion:

> In order to address cultivation, is not withstanding as to the prerequisition on the requisition for "desert land entry" a mere homestead position, as in this applicant's position through good faith and honesty and peaceable entry, which was not only made but maintained beyond the presumption and actual knowledge thereof, and whereas presuming that entryman was certificated and

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fn. 2 (continued)
of the W 1/2 NE 1/4 and the N 1/2 SE 1/4 of sec. 10. Although the record contains a copy of a deed from Syndbad to appellant purporting to convey 80 acres in sec. 10 and referencing "Mineral Claim named Ruth," appellant insists the color-of-title claim is not based on the mining claims.

3/ Repealed, Federal Land Policy and Management Act of 1976, P.L. 94-579, § 705(a), 90 Stat. 2792 (formerly codified at 43 U.S.C. § 315g (1970).

> upon immediate discovery, triggered this entryman to file said application as requested by the Bureau of Land Management, known as A-21192, which does not invalidate an error in which to pursue Color of Title or any other further application which the B.L.M. may request to be filed in order to clear this error, due this applicant being in good faith and by peaceful means, adverse possession until pursuit by this entryman be satisfied by the B.L.M. in correcting and causing the record to be corrected forever.

(Statement of Reasons at 2-3).

> [1] The Color of Title Act, 43 U.S.C. § 1068 (1982), provides in part:
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> The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation * * * issue a patent for not to exceed one hundred and sixty acres of such land * * *. [Emphasis added].

Applicants under the Color of Title Act have the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory conditions for purchase under the Act have been met. Hal H. Memmott, 77 IBLA 399 (1983); Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1976). In order to support a class 1 claim, 4/ an applicant must show that the public land in question has been held in good faith and in peaceful adverse possession by applicant, his ancestors, or grantors under claim of title for more than 20 years. Carmen M. Warren, 69 IBLA 347 (1982). A color-of-title application must be rejected in the absence of an instrument which purports to convey the land at issue to the applicant. Carmen M. Warren, supra at 349. Appellant's application made no reference to any instrument of conveyance, asserting rather that appellant "entered" the land in 1932. 5/

The deed appearing in the record from Syndbad to appellant cannot support the color-of-title application. Apart from the problems with the land

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4/ Color-of-title claims under the provisions of 43 U.S.C. § 1068 (1982), are divided into two types conforming to the two types of claims which the statute authorizes. Appellant's application was designated as class 1 which required improvements or cultivation of the land as well as good faith, peaceful, adverse possession of the land under claim or color-of-title for more than 20 years. See 43 CFR 2540.0-5(b).

5/ It is clear from the record, including the master title plat, that the subject land was withdrawn from entry in 1909 as part of a reclamation withdrawal. Subsequently, the land was opened only to mineral entry under the mining laws pursuant to the terms of 43 U.S.C. § 154 (1982). The land has not been open to nonmineral entry since 1909. Thus, no viable claim may be based on a purported "entry."

description which purports to describe 80 acres in sec. 10, 6/ the deed dated in 1984 is clearly insufficient to establish a claim of title existing for 20 years. The record discloses no conveyance prior to the Syndbad deed.

In addition, it is well established that a color-of-title application is properly rejected where applicant's chain of title originated at a time when the land was withdrawn because the land could not, therefore, be held in "peaceful, adverse possession" as required by 43 U.S.C. § 1068 (1982). 43 CFR 2540.0-5; Richard F. Christiansen, 85 IBLA 108, 109 (1985); John S. Cluett, 52 IBLA 141 (1981). The land at issue here has been withdrawn from entry (except for location of mining claims) since 1909.

Further, there can be no good faith adverse possession for a period of 20 years where the predecessor in interest, Syndbad, clearly knew title to the land was in the United States as a result of the extensive administrative and judicial litigation which resulted in a finding that his mining claims were void. See Hal M. Memmott, supra at 403.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

6/ The deed described the land conveyed as:

"The South, East Quarter, North East, Quarter
and
South West Quarter, North East, Quarter
of Section 10, Township 1 North, Range 8 East.
80 Acres, Plus 125 feet north, then 2,360 so.
Sect. 11
Mineral Claim named Ruth, docket 193, Page 494, 495, 496, &
497
Less * * *."

As a result of the inadvertent placement of commas, the description failed to describe the land conveyed in accordance with the public land surveys. In order to support a color-of-title claim, a deed must describe the land conveyed with sufficient certainty that the identity of the land may be ascertained. Charles M. Schwab, 55 IBLA 8 (1981); Anthony T. Ash, 52 IBLA 210 (1981).